GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

MEMORADUM

TO: Board of Zoning Adjustments

FROM. Andrew Altman, Director
Office of Planning

DATE: September 26, 2001

SUBJECT: Waiver of Rules for Late Submittal of the Report on Case No. 16765

The attached Final Report concerning the application for the Variances and Special Exception Request located at 1155 16th Street, NW is being submitted less than 7 days prior to the Board of Zoning Adjustment's consideration of the item and scheduled public hearing. The Office of Planning respectfully requests that the Commission waive its rule and accept the report into the record.

Attachments

AA/jm

BZA
Case No. 16765
Exhibit No. 28

Board of Zoning Adjustment
District of Columbia
CASE NO.16765
EXHIBIT NO.28

GOVERNMENT OF THE DISTRICT OF COLUMBIA
OFFICE OF PLANNING

Office of the Director

TO: **Board of Zoning Adjustment**

FROM: **Andrew Altman**
Director

DATE: **September 27, 2001**

SUBJECT: **BZA Case #16765; American Chemical Society**
1155 16th Street, NW (Square 197, Lot 85)

APPLICATION

This report summarizes the Office of Planning's (OP) review of the above application from the American Chemical Society (The Applicant) to the Board of Zoning Adjustments for a Special Exception pursuant to 11 DCMR §§3104 and 508 of the Zoning Regulations and for variances to §§531 and 2001.3, pursuant to 11 DCMR §3103 of the Zoning Regulations for the property described as Lot 85 of Square 197 (the Property) in northwest DC. The report presents the Office of Planning's findings and recommendations to the Board of Zoning Adjustment.

SUMMARY OF RECOMMENDATIONS

The Office of Planning recommends denial of the applicant's request.

SITE LOCATION

The property is located in the northwest corner of Square 197, which is bounded by 16th Street on the west, M Street on the north, 15th Street on the east, and L Street to the south (See aerial). The property fronts on 16th Street and is in the SP-2 zone, which extends on both sides of 16th St down to the White House. The Property is composed of two buildings joined at the ground level; according to the Computer Aided Mass Appraisal (CAMA) and the Sanborn Property Atlas, the first was built in 1959 and is in the SP-2 Zone. The eastern half was built in 1988 and is in the C-4 Zone.

PROJECT DESCRIPTION

The project proposes to permanently enclose the patio on the south side yard of the property. The applicant has stated that due to additional information technology requirements of their organization, they need to add computer space to the roughly 3,000 sf of existing computer space. They have argued that the logical location is the employee

lunchroom, which is directly above the existing computer space. In order to relocate the employees' lunchroom area they are applying to the BZA to enclose their side patio of their non-conforming building. The building is currently non-conforming due to its existing floor-area-ratio (FAR).

The enclosure will measure 1,260 Square Feet reaching to a height of 15 feet. It is made of steel and glass and will be mostly obscured from the street by trees.

ANALYSIS

Variances

Under section 3103.2, applicants must meet three tests to receive a variance. The three tests have been bolded in the following section.

> 3103.2 As set forth in D.C. Code Ann. §5-424(g)(3) (1981), "where, by reason of **exceptional narrowness, shallowness or shape of a specific piece of property at the time of the original adoption of the regulations, or by reason of exceptional topographical conditions or other extraordinary or exceptional situation or condition of a specific piece of property**, the strict application of any regulation adopted under D.C. Code Ann. §§5-413 to 5-432 (1981) would **result in peculiar and exceptional practical difficulties** to or exceptional and undue hardship upon the owner of the property, to authorize, upon an appeal relating to the property, a variance from the strict application so as to relieve the difficulties or hardship; **Provided, that the relief can be granted without substantial detriment to the public good and without substantially impairing the intent, purpose, and integrity of the zone plan** as embodied in the Zoning Regulations and Map."

To meet these tests the applicant has argued that the property is unique because it is:

- A Split zoned property, and
- A Non-conforming building

First, while citing the split zoning of the property, the applicant shows no correlation between the split zoning and the inability to locate the lunchroom so as to conform to the Zoning Regulations. In fact, the proposed lunchroom would be located entirely within the boundaries of the SP-2 portion of the site. In Addition, the property was originally not split zoned. The western half of the property was constructed in 1959, after the enactment of the regulations. The building may have been approved and under construction prior to the regulations; OP asks the applicant to verify this. According to the DC Surveyor the property was then assembled from multiple lots on June 24, 1982 well after the adoption of the zoning regulations. The eastern portion of the property on M St is separated by an underground garage entrance and was then constructed in 1988 (see Picture 3). Given this order of events, the fact that they are now one lot of record indicates that this facet of the property's uniqueness is self-induced.

The split zoning is not a unique circumstance within this neighborhood. The National Geographic Society, directly across 16th Street, from the subject property is also split zoned and evidenced in the applicant's prehearing statement (page 3).

When the Zoning Regulations using FAR as a limiting factor were enacted, regulations were drafted to cover those older buildings that did not conform to the zoning classification. Chapter 20 regulates non-conforming buildings and permits by special exception changes to those building. The section reads as follows:

> 2001.3 Enlargements or additions may be made to the structure; Provided, that the following requirements shall be met:
>
> (a) The structure shall conform to percentage of lot occupancy requirements; and
> (b) The addition or enlargement itself shall conform to use and structure requirements; and
> (c) The addition or enlargement itself shall not increase or extend any existing, non-conforming aspect of the structure, and shall not create any new non-conformity of structure and addition combined.

In light of the above section the non-conforming building should not be considered unique because non-conforming structures as specifically addressed by the regulations. In fact, the regulations state in sub-paragraph (c) that the special exception not be permitted if it increases the buildings non-conformity. Uniqueness by definition would mean the regulations could not anticipate problems faced by such properties.

Second, the applicant has stated that their practical difficulty is due to:

- The building being non-conforming
- The tenant needs more space because of changes in their situation

Nothing indicates a non-conforming building itself is a practical difficulty. In this case, the users of the non-conforming building have an advantage because they have more non-residential FAR (5.9) than they would be normally allowed in the SP-2 zone (3.5).

Further, they have argued that the need for additional computer space has forced them to convert their employees' lunchroom. However, they have not provided sufficient evidence as to why an employee lunchroom cannot be located elsewhere in the building. Therefore OP believes that this change in the circumstances of the tenant is self-induced and does not meet the standard for practical difficulty. Practical difficulty would exist if in an effort to comply with other laws or regulations changes to the building were required such as fire stairs or handicap accessibility.

The applicant has cited previous cases that have set a precedent, however in the case of the National Education Association, as stated in the order, the design phases were approved prior to the enactment of the Zoning Regulations and the case was approved in part to provide emergency fire stair.

Third, the applicant has argued that the addition, due to its limited size does not cause substantial detriment to the public good or the intent, purpose, and integrity of the zone plan because it:

- Does not represent a change in the intensity of the use of the property,
- Has received approval from their neighbors and the ANC, and
- It would largely be hidden from view.

The request represents an expansion of a non-conformity. OP agrees that the request will not cause "substantial detriment to the public good" but OP cannot conclude that the request is within the intent or purpose of the zone plan. Clearly, § 2001 intends that non-conforming aspects of structures not be expanded and the zone plan of the SP-2 zone has a maximum non-residential FAR of 3.5. The subject property is non-conforming because it exceeds the FAR maximum and the request proposes to expand that non-conformity. The issue is underscored by the fact that the application doesn't address why space cannot be configured within a building, which is already substantially above the commercial FAR permitted on the site.

Special Exception
Section 3104.1 of the Zoning Regulations requires two tests be met for the granting of special exceptions. These requirements are in bold below.

> 3104. 1 Pursuant to authority contained in the Zoning Act, the Board is authorized to grant special exceptions, as provided in this Title, where, in the judgment of the Board, **those special exceptions will be in harmony with the general purpose and intent of the Zoning Regulations and Zoning Maps** and **will not tend to affect adversely the use of neighboring property in accordance with the Zoning Regulations and Zoning Maps**, subject in each case to the special conditions specified in this title, as follows:

Office use in the SP-2 zoning district can only be constructed or added to by special exception. The regulations outline the requirements as follows:

> 508.3 The use, height, bulk, and design shall be in harmony with existing uses and structures on neighboring property.
>
> 508.4 The use shall not create dangerous or other objectionable traffic conditions.

OP agrees that the current office use is in harmony with the neighboring properties; the addition will not impact the existing height of the structure; and the design will be mostly screened from the neighboring properties as a result of its location and landscaping. However has stated above the request is not in accordance with section 2001.3 (c) which specifically states "The addition or enlargement itself shall not increase or extend any existing, non-conforming aspect of the structure."

Findings

1) The split zoning cited as making the lot unique is not relevant to the practical difficulty.
2) The assemblage of the lot after the creation of the zoning regulations results in a uniqueness that was self-induced; and the requested variance applies only to the portion of the lot zoned SP-2.
3) There are other properties in the immediate neighborhood that are also split zoned;
4) Non-conforming buildings are inherently not unique because there are specific regulations that govern their "addition and enlargement";
5) The Non-Conforming subject building exceeds FAR limits for its zone district and is not disadvantaged but rather has more space than the zone would ordinarily allow; and
6) Organizational staff growth is self-induced and requires them to make ordinary decisions with regards to space.
7) The application provides no explanation why the lunch room cannot be accommodated within the existing building.

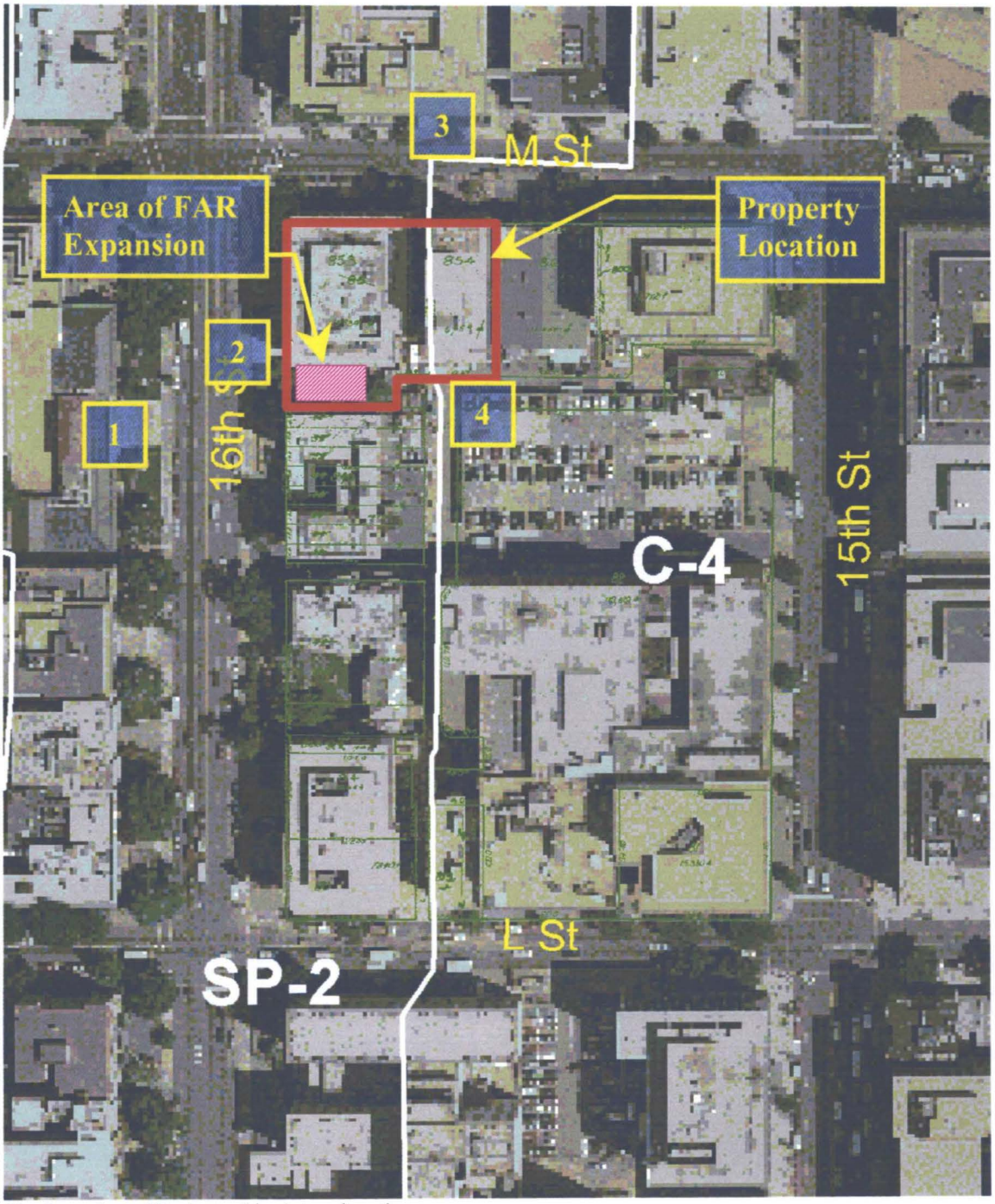
Recommendations

The Office of Planning concludes, based on the application that the circumstances of the property are not unique, that the application of the regulations would not result in practical difficulty and the application is not in harmony with the intent and purpose of the Zoning Regulations. Therefore, the Office of Planning recommends denial of the application.

Attachments

Aerial Photo
Contextual Photos

Attachment 1



Site Location of Project with picture locations



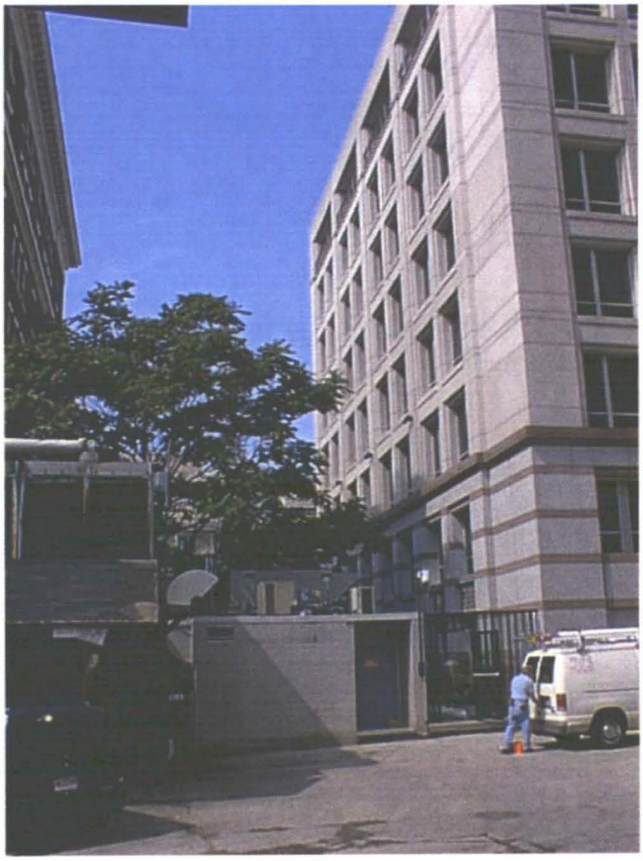
1) Property from 16th St Looking NW



2)Close up of Existing Patio



3) M St looking south at garage entrance between the 1958 building and the 1988 building



4) Looking west at the patio from the rear alley